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No. 05-1535

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DAVID HAMILTON AND SARAH HAMILTON,
Petitioners,

v.

WASHINGTON STATE PLUMBING & PIPEFITTING INDUSTRY PENSION PLAN, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Can a surviving spouse's right to receive the annuity mandated by Congress in Section 205(a)(2) of ERISA, 29 U.S.C. § 1055(a)(2), be extinguished by a state domestic relations order and paid to another when the order is silent as to whom the survivor annuity should be paid?

2. Can the mandatory surviving spouse annuity be paid to the children of a former marriage instead of only to a "qualified spouse" or "former spouse" as required by Section 206(d)(3)(F) of ERISA, 29 U.S.C. § 1056(d)(3)(F)?

3. Can a state domestic relations order which is silent as to whom the surviving spouse annuity must be paid become a "Qualified Domestic Relations Order" under Section 206(d)(3)(B) of ERISA, 29 U.S.C. § 1056(d)(3)(B), if the order requires a pension plan to pay the mandatory survivor annuity to someone other than a "qualified spouse" or "former spouse"?

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Respondents do not have any parent corporations and have no stock.

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BRIEF FOR RESPONDENTS IN OPPOSITION

INTRODUCTION

Respondents, Plumbers and Pipefitters National Pension Fund ("National Pension Fund"), Washington State Plumbing and Pipefitting Industry Pension Plan ("State Plan") and Mary Hamilton, submit this Opposition Brief in response to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit filed by Plaintiffs/Petitioners David and Sarah Hamilton.

The Petition should be denied because it identifies no decision of another United States court of appeals (or any other court) on the same matter which is in conflict with the decision of the court below as identified by Supreme Court Rule 10(a), nor does the narrow issue decided by the court

below rise to the level of an "important question of federal law" as identified in Supreme Court Rule 10(c).

The court below decided simply that a qualified preretirement surviving spouse annuity ("QPSA"), a pension benefit mandated by Section 205(a)(2) of ERISA[1], 29 U.S.C. § 1056(a)(2), must be paid to a deceased individual's surviving spouse as required by the statute unless the terms of a domestic relations order specifically provide that the QPSA will be paid to another. As the Hamiltons' domestic relations order was silent on the question of to whom the mandatory survivor benefit should have been paid, the court below correctly followed the requirements of ERISA, and held that Mr. Hamilton's surviving spouse was entitled to the survivor benefit instead of the Hamilton children.

The decision from the court below is entirely consistent with other decisions from the federal courts of appeal. It is also consistent with guidance published by the federal agencies charged with the responsibility for enforcing ERISA—the Internal Revenue Service and Department of Labor. Furthermore, the decision below is consistent with this Court's decisions, state and lower federal court decisions, learned treatises, as well as the Plans of Benefits of the three pension funds involved in this case.

At its core, the Petitioners assert that the Court should review the decision in this matter only because the court below interpreted the applicable sections of ERISA incorrectly. The Petitioners' assertion in this regard fails on the merits based on the language of the applicable statute. The policy arguments raised by the Petitioners for why the plain language of ERISA should not be followed in this case are more appropriately addressed to Congress rather than to the Court.

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[1] The Employee Retirement Income Security Act of 1974, 88 Stat. 829 at 832, as amended. 29 U.S.C. §§ 1001 – 1461.

STATEMENT OF THE CASE

Michael Hamilton was a participant in three ERISA-governed pension funds: the National Pension Fund, the State Plan and the Supplemental Pension Plan for Washington State Plumbing and Pipefitting Industry Pension Plan for Local Union No. 32 ("Supplemental Plan"). He divorced Linda Hamilton-Oppegaard (the Petitioners' mother) on April 3, 1996, and later married Respondent Mary Hamilton. Michael Hamilton died several years after marrying Mary Hamilton. At the time of his death, Michael Hamilton had not retired and was not receiving any pension benefits.

Under the terms of their respective Plans of Benefits, the National Pension Fund and the State Plan ("Plan Respondents") awarded to Mary Hamilton a QPSA. As noted by the court below, "ERISA requires pension plans to conform to a myriad of reporting, disclosure, participation, vesting and funding requirements." *Hamilton v. Washington State Plumbing & Pipefitting Industry Pension Plan*, 433 F.3d 1091, 1095 (9th Cir. 2005), Pet. App. 6a. The payment of a QPSA to a surviving spouse is one of the "myriad" of mandatory provisions established in ERISA. In fact, ERISA was amended in 1984 to mandate the payment of surviving spouse benefits. *See Boggs v. Boggs*, 520 U.S. 833, 843 (1997); 29 U.S.C. § 1055(a)(2).[2]

Section 1055 of Title Twenty-Nine of the United States Code, as amended by the REA, provides that if a vested participant dies before he began to receive pension benefits leaving a surviving spouse to whom he has been married for at least one year, like Michael and Mary Hamilton, "a qualified preretirement survivor annuity *shall be provided* to the surviving spouse." 29 U.S.C. § 1055(a)(2) (emphasis added). The REA establishes that this required survivor

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[2] This amendment to ERISA is the Retirement Equity Act of 1984 ("REA"), Pub. L. 98-397, 98 Stat. 1426.

benefit may be waived by the surviving spouse *only if* the surviving spouse (Mary Hamilton in this case) consented to waive the right to the statutorily-mandated QPSA in writing. 29 U.S.C. § 1055(c)(2).

In enacting the REA, Congress specifically contemplated how the surviving spouse benefits at issue in this case might be assigned to someone other than a surviving spouse. Section 1056(d)(3)(F) establishes two conditions that must be met before the mandatory surviving spouse benefits may be assigned to someone other than the deceased's surviving spouse. First, the assignment of the survivor benefits to another must actually be "provided in any qualified domestic relations order." 29 U.S.C. § 1056(d)(3)(F). Second, the assignment may only be made to a participant's "former spouse." 29 U.S.C. § 1056(d)(3)(F)(i).

In this case, the Hamiltons' divorce decree met neither of these two requirements. The divorce decree was silent as to how the required survivor benefits should be paid in the event of Mr. Hamilton's death. *Hamilton*, 433 F.3d at 1094; Pet. App. 4a. In addition, as the Hamilton children were not a "former spouse," the court below correctly held that the Hamiltons' divorce decree did not extinguish Mary Hamilton's right to the statutorily mandated QPSA.[3] Under these circumstances, given the plain language in Section 1056(d)(3)(F) and the express Congressional intent to mandate the payment of survivor benefits in Section 1055(a)(2), the court below was correct in holding that the Hamiltons' domestic relations order,

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[3] There is no suggestion by the Petitioners that Mr. Hamilton's surviving spouse, Mary Hamilton, ever waived her right to the surviving spouse benefits as required by Section 1055(c)(2). What is more, on page 5 of the Petition, the Petitioners admit that Mr. Hamilton's former spouse, Linda, agreed "to forgo any interest in the surviving spouse annuity" which is now payable to Mr. Hamilton's surviving spouse, Mary Hamilton.

which was silent on the issue of survivor benefits, did not permit the Hamilton children to extinguish Mary Hamilton's right to receive the required QPSA.

REASONS FOR DENYING THE WRIT

The Court of Appeals reached the unremarkable conclusion that ERISA "requires an explicit assignment of surviving spouse rights in a [domestic relations order]; a general designation of an alternate payee as a pension beneficiary does not serve to designate surviving spouse benefits." *Hamilton*, 433 F.3d at 1100; Pet. App. 15a. The Court of Appeals' decision is based on the explicit requirements contained in ERISA. 29 U.S.C. §§ 1056(d)(3)(F), 1055(a)(2) and 1055(c)(2).

As detailed below, the decision from the Court of Appeals for the Ninth Circuit is consistent with the decisions from other courts of appeal, is consistent with the advice issued by the federal agencies responsible for administering ERISA, is consistent with decisions from this Court, as well as state and lower federal courts and learned treatises, and is consistent with the Plans of Benefits of all three pension plans involved here. Under these circumstances there is no compelling reason to grant a Writ of Certiorari.

I. THE DECISION BELOW IS CONSISTENT WITH DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL

The decision of the court below, that the survivor benefits mandated by the REA must be explicitly assigned to another in order to extinguish a surviving spouse's entitlement to those benefits, is supported by decisions from the other United States courts of appeal. In *Dorn v. International Bhd. of Elec. Workers*, 211 F.3d 938 (5th Cir. 2000), for example, the court of appeals considered a case where a former spouse

sought to continue her pension benefits after her former husband, who had remarried, died. The former spouse relied on a domestic relations order that gave her a portion of her former husband's monthly pension while he was in retirement, but did not expressly recognize her as the "surviving spouse" for benefits payable after her former husband's death. The fact that she was named as an alternate payee in the domestic relations order, like the Hamilton children in the instant case, was not sufficient to convey surviving spouse rights upon her. *Id.* at 947. The failure to specifically grant surviving spouse rights in the domestic relations order doomed the former spouse's claim to pension benefits after the death of the participant. *Id.*

In *Samaroo v. Samaroo*, 193 F.3d 185 (3rd Cir. 1999), a former spouse sought a QPSA after her former husband died. The Third Circuit explained that the terms of the divorce decree were insufficient to entitle the former spouse to a QPSA because the decree "was silent on the issue of survivor rights." *Id.* at 187 n.2. *See also Moore v. Philip Morris Cos.*, 8 F.3d 335 (6th Cir. 1993) (holding surviving spouse entitled to benefits instead of the children who claimed benefits under state law provisions).

The decision below also is consistent with the reasoning of this Court in *Boggs v. Boggs*, 520 U.S. 833 (1997). In *Boggs*, the participant's surviving spouse and the children of the participant's first marriage disputed entitlement to pension benefits. The children claimed that they were entitled to their mother's (the participant's former spouse) share of pension benefits pursuant to a testamentary transfer. This Court held that the surviving spouse's right under ERISA to the mandatory survivor benefits "superseded" the children's right to benefits under state law. *Id.* at 841. In holding that ERISA's mandate to pay QPSA benefits to surviving spouses superseded any state laws to the contrary, the Court relied on

the fact that the statutory object of the survivor benefit provision in Section 1055 "is to ensure a stream of income to surviving spouses" and that "even a plan participant cannot defeat a non-participant surviving spouse's statutory entitlement to an annuity." *Id.* at 843. This reasoning supports the Ninth Circuit's holding in this case that the QPSA properly was payable to Mr. Hamilton's surviving spouse as required by ERISA, particularly when the Hamiltons' state court divorce decree in this case failed to explicitly provide for another outcome.

Accordingly, as the decision of the Ninth Circuit Court of Appeals is consistent with the decisions of other courts of appeal, as well as the logic of decisions from this Court, the Petition should be denied.

II. THE DECISION IS CONSISTENT WITH IRS AND DOL GUIDANCE, STATE AND LOWER FEDERAL COURTS, AND LEARNED TREATISES

In addition to being consistent with other courts of appeal and the logic of this Court in previous decisions, the holding of the Ninth Circuit is also consistent with Department of Labor and Internal Revenue Service publications that provide guidance for how state court domestic relations orders should be drafted to assign the statutorily mandated survivor benefits to an alternate payee. *Hamilton*, 433 F.3d at 1100-01; Pet. App. 15-16a. Both agencies advise that express language identifying that survivor benefits are to be paid to an alternate payee instead of to the participant's surviving spouse is prudent if the parties intend to effectuate such an assignment. *Id.* Furthermore, the DOL and IRS each caution individuals drafting domestic relations orders, in language directly applicable to the Hamiltons' situation, that in order to receive a survivor benefit the alternate payee designated in a domestic

relations order must be a spouse and *not* a child or other dependent of the participant. *Id.*

In light of the fact that the decision below is supported by the decisions of other federal courts of appeal, the reasoning of this Court in *Boggs*, as well as the two federal agencies charged with responsibility for ERISA, it is hardly surprising to find support for the result also in decisions from state courts, federal district courts and learned treatises. *See, e.g., Kazel v. Kazel*, 786 N.Y.S. 2d 420, 421, 819 N.E.2d 1036 (N.Y. 2004) (a former spouse can overcome the right of a surviving spouse to receive a survivor annuity "only if specifically awarded such benefit by the matrimonial court. Further, such an award must be reflected in a QDRO, evidenced by clear language designating the former spouse as the surviving spouse for purposes of survivor benefits"); *Hoke v. Hoke*, 811 N.Y.S. 2d 528 (N.Y. App. 2006) (same); *Robson v. Electrical Contractors Ass'n Local 134 IBEW Joint Pension Trust of Chicago, Pension Plan No. 5*, 312 Ill. App. 3d. 374, 727 N.E.2d 692, 698, as modified on denial of rehearing (Ill. App. 2000) ("If the QDRO fails to specify that an alternate payee, or the former spouse, has a right of survivorship, the alternate payee or former spouse will not be entitled to that benefit"); *Stahl v. Exxon Corp.*, 212 F. Supp. 2d 657 (S.D. Tex. 2002) (rejecting claim of former spouse to surviving spouse benefits because QDRO did "not expressly state that Beverly shall receive the SSA [surviving spouse annuity] payments"); Gary A. Schulman, QUALIFIED DOMESTIC RELATIONS ORDER HANDBOOK 158, 220 (2d ed. 1999) ("*Warning*: QPSA protection for an alternate payee under a QDRO is not automatic. QPSA coverage is available only to the extent that you include specific language in the QDRO

providing such preretirement survivorship coverage for the alternate payee").[4]

Notably, the Petitioners fail to cite to a single case that holds, or even states in dicta, that an alternate payee's rights under a domestic relations order supersede those of a surviving spouse where the mandatory survivor pension benefits are not expressly assigned to the alternate payee in the domestic relations order. Given this unanimous support for the decision reached by the Ninth Circuit Court of Appeals, and the absence of any authority to the contrary, this case does not present any compelling reason for review, and the Petition should be denied.

III. THE DECISION IS CONSISTENT WITH THE PLANS OF BENEFITS

Consistent with this Court's holding in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 103 (1989), the Ninth Circuit determined that the Plan Respondents' interpretations of the language in their respective Plans of Benefits are entitled to deference. In this case, Section 7.01 of the National Pension Fund's Plan of Benefits, Sections 7.03 and 7.05 of the State Plan, and Section 7.8 of the Supplemental Plan, specifically provide that in the event of a participant's preretirement death, like Mr. Hamilton's, if a surviving spouse is entitled to the mandatory QPSA, like Mary Hamilton, then no death benefits are payable to a designated beneficiary, like the Hamilton children. *Hamilton*, 433 F.3d at 1102; Pet. App.

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[4] The National Pension Fund also issues guidance for individuals when preparing domestic relations orders. That guidance provides the following example, directly applicable to the situation presented by the Hamiltons' divorce decree: "if the QDRO does not provide that the Alternate Payee is to be the Participant's surviving spouse for the Preretirement Surviving Spouse Pension, and if the Participant dies before the Alternate Payee has begun receiving a benefit, no benefits will be paid under the QDRO." *Hamilton*, 433 F.3d at 1103, ft. 15; Pet. App. 26-27a.

18-19a. *Holloman v. Mail-Well Corp.*, 443 F.3d 832, 842 (11th Cir. 2006) (noting that pension payments to "beneficiaries" and pension payments to "surviving spouses" are "separate, distinct features" in pension plans.)

ERISA mandates that benefits must be paid strictly in accordance with the Plan of Benefits. *White v. Provident Life Accident Co.*, 114 F.3d 26, 28 (4th Cir. 1997) (ERISA demands adherence to the clear language of the employee benefit plan.) The failure to pay benefits in accordance with the Plan of Benefits can subject the pension plans and their Trustees to civil liability. *See, e.g.* 29 U.S.C. § 1104(a)(1)(D) (breach of fiduciary duty); 29 U.S.C. § 1132(a)(1)(B) (civil liability). Therefore, in this case where all three of the Plans of Benefits provide expressly that no benefits were payable to the Hamilton children when the QPSA was paid to Mary Hamilton, the court below was correct to defer to the Plan Respondents' determinations, and the facts of this case present no compelling basis to grant the Petition.

IV. MISSTATEMENTS OF FACT AND LAW IN THE PETITION

The Petition for Writ of Certiorari contains several misstatements of fact and law. Pursuant to Supreme Court Rule 15.2, Respondents identify the following misstatements:

1. The decision below does not undermine the ability to protect children of divorcing parents. Pet. at 9-10. Instead, the decision below protects the ability of divorcing parties to obtain a steady stream of support for their children, even when a parent dies before reaching retirement. Divorcing parents can obtain a stream of income for their children's support, by way of annuity payments to the participant's former spouse (and the parent of the children) over the course of the former spouse's entire lifetime. As discussed above, every pension plan is required, by the mandate established in the REA, to pay this survivor annuity. 29

U.S.C. § 1055(a)(2). The lump sum death benefit sought by the Petitioners in this case, on the other hand, is merely an optional benefit provided by the particular plans of benefits on the facts of this case. Assigning the payment of a stream of mandatory survivor annuity payments explicitly, as required by the court below, is far more useful for the support of children than extinguishing that annuity in favor of the possibility that a plan might provide for a lumpsum death benefit. Furthermore, it is entirely appropriate that support payments for children should be placed into the hands of a responsible adult parent, the former spouse as required by ERISA, 29 U.S.C. § 1056(d)(3)(F)(i), rather than directly into the hands of children as sought by the Petitioners in this case.

2. The decision below does not undermine certainty in the enforcement of domestic relations orders. Pet. at 11-12. To the contrary, the decision of the Court of Appeals promotes certainty. The holding of the court below requires that when a divorcing couple intends the statutorily mandated survivor benefits to be paid to an alternate payee instead of to the surviving spouse, that decision must be made explicitly. Without such an explicit assignment, pension fund administrators and the courts will be left with the uncertain task of determining a divorcing couple's intentions after the death of one of the parties to the divorce decree.

3. The authority of state courts to issue domestic relations orders is not undermined by the decision of the court below. Pet. at 12-15. To the extent the Petitioners argue that requirements of Section 1056(d)(3)(F)(i) are unduly restrictive to ensure for the support of children, it was not the court below that created the restriction, but it was Congress that created it when the provisions of REA became law. Furthermore, the decision below requires that divorcing parties draft domestic relations orders to conform to the requirements of ERISA if they wish to provide surviving spouse benefits to an

alternate payee. Requiring domestic relations orders to be carefully drafted does not undermine the state courts' authority—it ensures that state court domestic relations orders are implemented as intended.

4. There is no evidence in the record demonstrating the Hamiltons' intentions regarding the divorce decree other than the plain language of the divorce decree itself. Pet. at 4-5. Contrary to the Petitioners' statement of facts, the record from the proceedings below contains no evidence demonstrating what Michael Hamilton and his former spouse intended concerning the division of their marital property other than the written terms of their divorce decree. Indeed, the district court made no findings of fact whatsoever concerning their intentions, and even prohibited the National Pension Fund from obtaining discovery on that very subject. Pet. App. 28a-70a. If parole evidence were presented to show the Hamiltons' intentions, that evidence would not support the Petitioners' representations. Instead, it would show only what the Hamiltons (and their respective divorce attorneys) explicitly provided in the decree—that the children should be designated as beneficiaries in the event that Mr. Hamilton's pension plans paid benefits to beneficiaries as opposed to his surviving spouse.

5. The Court of Appeals was correct to conclude that the Hamilton divorce decree could not be considered a Qualified Domestic Relations Order. Pet. at 7 and 19-20. The lower court's conclusion, that the divorce decree could not be "qualified" under the specific requirements of Section 206(d)(3)(A)-(D) of ERISA, 29 U.S.C. § 1056(d)(3)(A)-(D), is not a separate conclusion, but is a necessary result of the holding that the Hamilton divorce decree did not contain sufficiently specific language to extinguish Mary Hamilton's statutory right to a QPSA. Put another way, all of the Respondents' arguments demonstrating why the Hamilton divorce decree could not strip Mary Hamilton of

her right as a surviving spouse to the survivor benefits also fully support the conclusion that the Hamilton divorce decree could not become a Qualified Domestic Relations Order. In any event, even if this assertion of the Petitioners were correct, which it is not, the Court of Appeals had the authority to reach the legal conclusion that the Hamilton divorce decree was not a QDRO. *United States Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 447 (1993) (*quoting Arcadia v. Ohio Power Co.*, 498 U.S. 73, 77 (1990)) (a court may consider an issue ultimately dispositive of the dispute before it, even an issue the parties fail to identify and brief).

CONCLUSION

For the reasons set forth above, Respondents, the National Pension Fund, the State Plan and Mary Hamilton, respectfully request that the Petition for a Writ of Certiorari filed by Plaintiffs/Petitioners be denied. Petitioners have failed to present any compelling reason for review. At most, Petitioners quibble over the Ninth Circuit's interpretation of the relevant statute; they would simply interpret it differently. This forms no basis for review by the Court.

Respectfully submitted,

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